

Decision 01-03-030 March 15, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's Own Motion  
to Consider the Costs and Benefits of Various  
Promising Revisions to the Regulatory and  
Market Structure Governing California's Natural  
Gas Industry and to Report to the California  
Legislature on the Commission's Findings.

Investigation 99-07-003  
(Filed July 8, 1999)

**O P I N I O N**

This decision grants Aglet Consumer Alliance (Aglet) \$15,910.16 in compensation for its contribution to Decision (D.) 00-05-049 and grants The Utility Reform Network (TURN) \$17,246.02 in compensation for its contribution to D.00-02-050 and D.00-05-049.

**1. Background**

The Commission initiated Rulemaking (R.) 98-01-011 on January 21, 1998, to assess the current market and regulatory framework for California's natural gas industry and to adopt reforms that emphasize market-oriented policies in the hope of creating benefit for all California natural gas consumers. In D.99-07-015, the Commission identified the most promising options for changes to the regulatory and market structure for the natural gas industry. On the same day D.99-07-015 was issued, we issued this Order Instituting Investigation (OII). The OII asked parties to prepare more detailed analyses of the costs and benefits of the promising options. In the interest of economical use of all parties' time, we incorporated the entire record from R.98-01-011 into the record for this

proceeding. We set a date for the submission of prepared testimony, should a settlement not be reached quickly.

On September 1, 1999, at the first prehearing conference (PHC) in this case, Pacific Gas and Electric Company (PG&E) represented that the parties had been discussing Operational Flow Orders (OFOs)<sup>1</sup> procedures since the spring and that a partial settlement regarding OFOs was close.

On October 22, 1999, a motion was filed requesting adoption of a settlement of OFO protocols on PG&E's system. The settling parties were PG&E; Calpine Corporation; TURN; Wild Goose Storage Inc.; School Project for Utility Rate Reduction; UtiliCorp Energy Solutions, Inc.; Aglet; Suncor Inc.; Office of Ratepayer Advocates (ORA); TXU Energy Services; Interstate Gas Services, Inc.; Enron Corp.; Kern River Gas Transmission Company; and the City of Palo Alto.

At a PHC in this matter on October 27, 1999, this proposal was briefly discussed. The assigned Administrative Law Judge (ALJ) requested that comments on the proposed settlement address three issues: (1) the effect of the settlement on the Gas Accord Decision (D.97-08-055); (2) the possibility that the settlement was only temporary; and (3) the effect of the settlement on the public interest. With regard to the last issue, the ALJ also requested declarations so that there was evidence upon which to base a finding that the settlement was in the public interest. On November 22, 1999, comments were filed by the parties supporting the settlement, including a chart dealing with the effect of the

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<sup>1</sup> An OFO is called on the PG&E transmission system when there is an intolerable imbalance between the gas received on the system and the gas delivered from the system.

settlement on the Gas Accord and a declaration from Daniel F. Thomas, a manager at PG&E.

On November 30, 1999, the ALJ gave notice to all parties in R.98-01-011 that the proposed settlement could be viewed as altering the terms of the settlement known as the Gas Accord, adopted by the Commission in D.97-08-055. Although offered the opportunity for a hearing, as mandated by Pub. Util. Code § 1708,<sup>2</sup> no party requested an evidentiary hearing on the settlement. In D.00-02-050, we approved the settlement with slight modification.

On January 28, 2000, PG&E and 25 other parties, including Aglet and TURN, filed a joint motion for approval of a separate, comprehensive settlement of issues related to the PG&E system. Generally, the comprehensive settlement identifies promising options already resolved on PG&E's system, promising options resolved by the settlement, and promising options that require further settlement discussions. Specifically, the comprehensive settlement addresses self-balancing options, electronic trading of imbalances and imbalance rights, core aggregation thresholds, unbundled utility core storage, treatment of PG&E's Core Procurement Department, secondary market trading by electronic bulletin board, provision of customer-specific data, metering pilot programs, and implementation costs. In D.00-05-049, we approved the PG&E comprehensive settlement without modification.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812.

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<sup>2</sup> All statutory citations are to the Pub. Util. Code.

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the PHC or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's<sup>3</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Aglet and TURN timely filed their requests for an award of compensation. Section 1804(c) also requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's

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<sup>3</sup> To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. NOI to Claim Compensation**

On September 29, 1999, Aglet timely filed its NOI after the first PHC, and on October 1, 1999, TURN timely filed its NOI. Aglet and TURN were found to be eligible for compensation in this proceeding by separate ALJ rulings dated October 29, 1999. The same rulings found that Aglet and TURN had demonstrated significant financial hardship required by § 1802(g).

### **4. Substantial Contribution to Resolution of Issues**

A party may make a substantial contribution to a decision in one of several ways.<sup>4</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision,<sup>5</sup> or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>6</sup> A substantial

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<sup>4</sup> Section 1802(h).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.<sup>7</sup>

The requirement that an intervenor's participation substantially assist the Commission in the making of its order is a tool the Commission applies in ensuring that compensated participation provides value to ratepayers. In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed.

In this proceeding, however, the record before us is limited since both D.00-02-050 and D.00-05-049 adopted settlements. The use of alternatives to litigation, such as settlements, creates difficulties in determining a particular intervenor's contribution to a proceeding.<sup>8</sup> When settlements are used in lieu of or as a supplement to paper proceedings and/or evidentiary hearings, the paper trail demonstrating an intervenor's contribution may be diminished. Alternatively, the paper trail may not consist of party-specific pleadings, but rather multi-party products.

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<sup>7</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

<sup>8</sup> Section 1802(f) specifically identifies "alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission" as a "proceeding" for purposes of the intervenor compensation statute.

We do not believe that participation in settlement negotiations, in and of itself, is sufficient participation to bring value to ratepayers, warranting compensation. However, we also recognize that the intervenor compensation program is intended to encourage the participation of all customers in Commission proceedings by helping them overcome the cost barriers to effective and efficient participation.<sup>9</sup> In this manner, the record is made more complete and the decision making process is improved. Although we sometimes find difficulty in evaluating the contribution of a customer in a settlement setting, we expect to continue to use our judgment and the discretion the Legislature has afforded us to award compensation to a party who participated in settlements when we find that party's contribution to our decision was substantial.

**Aglet**

In this proceeding, Aglet indicates that it represents customer interests that would otherwise be underrepresented in the proceeding. Aglet and TURN were the only active parties that represented only residential and small commercial customers. According to Aglet, Aglet and TURN either focused on different issues in the proceeding or acted cooperatively.

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<sup>9</sup> The statute also states that only those costs of intervention on behalf of particular customer interests that would otherwise be underrepresented should be compensated. (See § 1801.3(f).)

## **TURN**

TURN was a party to both settlements and recommended that the Commission adopt each settlement. Neither settlement was opposed by any party. It is impossible to define the benefits of TURN's participation based on the individual settlement provisions. Rule 51.9 precludes disclosure of settlement discussions, and each settlement was a negotiated compromise. Moreover, no hearings were held concerning the PG&E portion of this proceeding so there is no record to identify the positions of the parties. However, TURN believes that its participation assisted the Commission by providing information regarding the benefits of the settlements for core customers. TURN participated in order to ensure that there were no negative consequences for core customers and to assure positive effects were possible. TURN participated actively in negotiations, drafting certain provisions and pleadings related to approval of the settlements.

The OFO Settlement adopted in D.00-02-050 revised established protocols for the provision of information relevant to the calling of OFOs, established guidelines for calling customer-specific OFOs, and established methods for treating imbalances of the Core Procurement Group. TURN participated to ensure core interests were represented in the negotiation of proper mechanisms implementing these protocols. The Commission specifically acknowledged and confirmed TURN's interpretation that consumer representatives may participate in the OFO Forum. (D.00-02-050, FOF No. 9, *mimeo.* at 16.)

TURN was more active in negotiations leading to the PG&E Comprehensive Settlement than it was in the OFO Settlement, since the former covered more issues of specific interest to core customers. In determining that the settlement is reasonable in light of the whole record and in the public



interest, the Commission specifically cited a joint declaration of ORA, TURN and Aglet. (D.00-05-049, *mimeo.* at 25-27.)

### **Discussion**

No response to Aglet's or TURN's requests has been filed. In assessing Aglet's and TURN's substantial contribution, we weigh our desire to encourage participation of a broad range of customer interests. We also weigh the consequence of placing customers at risk for participating in settlements and the resulting incentive to litigate only to more explicitly document substantial contribution. Bearing in mind the need for representation of customers at the bargaining table as well as in the hearing room, we find that TURN substantially contributed to D.00-02-050 and that TURN and Aglet both substantially contributed to D.00-05-049 for the purpose of qualifying for intervenor compensation.

### **5. The Reasonableness of Requested Compensation**

Aglet requests \$15,910.16 as follows:

|                  |   |
|------------------|---|
| \$1,980.00       | 9.9 hours professional time, at \$200 per hour (1999)             |
| 10,252.00        | 46.6 hours professional time, at \$220 per hour (2000)            |
| 790.00           | 7.9 hours travel and compensation time, at \$100 per hour (1999)  |
| 2,321.00         | 21.1 hours travel and compensation time, at \$110 per hour (2000) |
| 117.57           | Copies  |
| 78.41            | Postage   |
| 332.96           | Travel (vehicle mileage, bridge tolls, BART fare, parking)        |
| <u>+38.22</u>    | Fax, telephone charges  |
| <b>15,910.16</b> | <b>Total Original Request</b>                                     |

TURN requests \$17,494.17 as follows:

|                  |  |
|------------------|--|
| \$5,118.75       | 16.25 hours Florio professional time, at \$315 per hour (1999, 2000) |
| 5,674.60         | 33.38 hours Hawiger professional time, at \$170 per hour (1999)      |
| 6,175.30         | 33.38 hours Hawiger professional time, at \$185 per hour (2000)      |
| 447.20           | Copies   |
| <u>78.32</u>     | Postage  |
| <b>17,494.17</b> | <b>Total Original Request</b>  |

### 5.1. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42). In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

#### **Aglet**

According to Aglet, the comprehensive settlement is beneficial because it reaches a reasonable compromise among PG&E and various customer interests, it implements promising options on PG&E’s gas transmission system,

and it will allow access to information that will promote market efficiency. The Commission noted that settled implementation costs included in rates are lower than PG&E originally sought and found that the comprehensive settlement holds benefits for PG&E and each of its customer classes. (D.00-05-049, discussion at *mimeo.* p. 23, FOF 6 at *mimeo.*, p. 29.)

Aglet argues that if the Commission agrees that Aglet contributed to the settlement, then Aglet contributed to the benefits gained by the settlement. Quantification of benefits is impractical, and numerical allocation to Aglet is impossible, but the overall benefits of the settlement clearly outweigh Aglet's costs of participation.

**TURN**

TURN indicates that quantification of the benefits of its participation in the negotiation of the two settlements is impossible. However, the Commission found that each of the two settlements adopted in the proceeding would be beneficial to customer classes. No doubt, the OFO settlement principally addressed concerns of large noncore customers. TURN's compensation request for work on this settlement is only \$2,848.35. The more important portion of TURN's work concerned the PG&E Comprehensive Settlement. The Commission found that this settlement holds benefits for each of PG&E's customer classes and that the implementation costs included in rates are lower than PG&E had originally sought.

If the Commission agrees that TURN contributed to the final settlements, then TURN contributed to the benefits gained by the settlement. TURN recommends that the Commission should find that TURN's participation was reasonably efficient and that the benefits substantially outweigh the costs of its participation.

### **Discussion**

We weigh Aglet's and TURN's cost of participation against the qualitative benefits we hope will be derived from the settlement and find that TURN's and Aglet's participation was productive and outweighed the cost of participation.

#### **5.2. Hours Claimed**

##### **Aglet**

Aglet documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity. We note that Aglet has correctly reported travel hours separately from professional time. We determine the hours claimed as reasonable.

##### **TURN**

TURN has documented the hours claimed by its attorneys by presenting a daily breakdown of hours and a brief description of the work performed. TURN has included 7.5 hours for preparation of its compensation request. TURN indicates that it billed only one-half of the hours related to compensation (mathematically equivalent to billing at 50% of the normal billing rate), as D.98-04-059 requires. (See D.98-04-059, *mimeo.* at 51.)

### **5.3. Hourly Rate**

#### **Aglet**

Aglet requests an hourly rate of \$200 for professional work performed by James Weil (Weil) during 1999 and an hourly rate of \$220 for professional work performed by Weil during 2000, and one half of each rate for travel time and for preparation of the compensation request. The Commission has previously awarded Weil compensation at \$200 per hour for professional work and \$100 per hour for travel time for work performed in 1998 (D.99-06-002). We agree that an hourly rate of \$200 for professional work and \$100 for travel time for work Weil performed in 1999 in this proceeding is also reasonable. In D.00-07-015, we awarded Weil compensation at \$220 per hour for professional work and \$110 per hour for travel time for work performed in 2000. We follow D.00-07-015 and find that an hourly rate of \$220 for professional work and \$110 for travel time for work performed in 2000 by Weil in this proceeding is reasonable.

#### **TURN**

TURN requests a rate of \$315 for Florio for his work in this proceeding. The Commission adopted an hourly rate of \$300 for Florio for professional services in 1998-99. TURN has requested the establishment of an hourly base rate of \$315 for Florio's work performed during the fiscal year July 1, 1999, through June 30, 2000, in a Request for Compensation in A.98-10-012, filed on June 26, 2000, and supplemented on June 29, 2000. In D.00-10-020, we resolved the compensation request by denying TURN's request for a rate of \$315, which was somewhat above the reported average of \$309, based on average partner rates found in *Of Counsel*. Instead we adopted a rate of \$310 for Florio,

because that rate more closely reflects the average. The \$310 rate was applied for work through June 30, 2000. The rate of \$310 will be adopted here as well.

The Commission adopted an hourly rate of \$170 for Hawiger for 1999 in D.99-05-019. TURN requests that the Commission establish the hourly base rate for Hawiger's work in 2000 at \$185, an increase of 8.8%. For almost two years, Hawiger has worked on energy-related cases at the Commission, focusing primarily on natural gas-related proceedings. Prior to joining TURN, Hawiger served for two years (1996-1998) as the Executive Director of a nonprofit fair housing organization in Palo Alto. Hawiger had practiced law for two years (1994-1996) as a staff attorney for legal services in Washington State. Hawiger obtained his law degree in 1993 from New York University School of Law and was admitted to the California bar in January 1998. TURN submits that the increase to \$185 is reasonable for an attorney with Hawiger's background and experience.

TURN refers to the June 1999 Annual Survey of the Nation's 700 Largest Law Firms in *Of Counsel*. TURN summarized the range of associate rates for the San Francisco and Los Angeles area firms that responded to the survey. Given Hawiger's level of experience, TURN submits that his rate should fall within the upper half of the reported range for associates. The *Of Counsel* survey reported a range of rates for associates from \$100 to \$350 per hour. Excluding the outliers on each end, the average low-end rate is \$127 and the average high-end rate is \$239. TURN suggests that an hourly rate of \$185 is quite reasonable for an attorney with four years of experience practicing in California and Washington. We find that an 8.8% increase in Hawiger's hourly rate is excessive, given that he has only four years experience practicing as an attorney.

We will reduce his hourly rate for 2000 to \$180, an increase of 5.9% over his 1999 rate.

#### **5.4. Other Costs**

##### **Aglet**

Aglet requests a total of \$567.16 in other costs, mostly associated with copying (\$117.57), travel (\$332.96), fax charges (\$13), telephone (\$25.22) and postage (\$78.41). Aglet includes careful documentation of these costs in its request. We have reviewed these costs and they appear reasonable.

##### **TURN**

TURN requests a total of \$525.52 in other costs, consisting of copying (\$447.20) and postage (\$78.32). TURN includes detailed documentation of these costs in its request. We have reviewed these costs and they appear reasonable.

#### **6. Award**

We award Aglet \$15,910.16, calculated as described above. We award TURN \$17,246.02, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate), commencing for Aglet on September 20, 2000 (the 75<sup>th</sup> day after Aglet filed its compensation request) and commencing for TURN on October 1, 2000 (the 75<sup>th</sup> day after TURN filed its compensation request), and continuing until the utility makes its full payment of each award.

As in all intervenor compensation decisions, we put Aglet and TURN on notice that the Commission staff may audit their records related to this award. Thus, Aglet and TURN must make and retain adequate accounting and other

documentation to support all claims for intervenor compensation. Aglet's and TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Pursuant to Rule 77(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. Aglet has made a timely request for compensation for its contribution to D.00-05-049. Aglet has demonstrated significant financial hardship.

2. TURN has made a timely request for compensation for its contribution to D.00-02-050 and D.00-05-049. TURN has demonstrated significant financial hardship.

3. Aglet contributed substantially to D.00-05-049, and TURN contributed substantially to D.00-02-050 and to D.00-05-049.

4. For work performed by Weil, an hourly rate of \$200 per hour, which has already been approved by the Commission in D.99-06-002 for work in 1999, is reasonable.

5. For work performed by Weil, an hourly rate of \$220 per hour, which has already been approved by the Commission in D.00-07-015 for work in 2000, is reasonable.

6. The miscellaneous costs incurred by Aglet are reasonable.

7. For work performed by Florio, an hourly rate of \$310 per hour, which has already been approved by the Commission in D.00-10-020 for work through June 30, 2000, is reasonable.



8. For work performed by Hawiger, an hourly rate of \$170 per hour, which has already been approved by the Commission in D.99-05-019 for work in 1999, is reasonable.

9. For work performed by Hawiger, an hourly rate of \$180 per hour for work in 2000 is reasonable.

10. The miscellaneous costs incurred by TURN are reasonable.

11. Aglet's and TURN's participation was productive in that the benefits realized from the settlements outweigh the cost of their participation.

### **Conclusions of Law**

1. Aglet and TURN have fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

2. Aglet should be awarded \$15,910.16 for its contribution to D.00-05-049.

3. TURN should be awarded \$17,246.02 for its contribution to D.00-02-050 and D.00-05-049.

4. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

5. This order should be effective today so that Aglet and TURN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Aglet Consumer Alliance (Aglet) is awarded \$15,910.16 in compensation for its substantial contribution to Decision (D.) 00-05-049.

2. The Utility Reform Network (TURN) is awarded \$17,246.02 in compensation for its substantial contribution to D.00-02-050 and D.00-05-049.

3. Pacific Gas and Electric Company (PG&E) shall pay Aglet \$15,910.16 within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning September 20, 2000, and continuing until full payment is made.

4. PG&E shall pay TURN \$17,246.02 within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning October 1, 2000, and continuing until full payment is made.

5. The comment period for today's decision is waived.

This order is effective today.

Dated March 15, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners